UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-13125-jmp; Adv. Case No. 09-1440

- -x

In the Matter of:

ION MEDIA NETWORKS, et al.,

Debtors.

- -x

ION MEDIA NETWORKS, INC.,

Plaintiff,

-against-

CYRUS SELECT OPPORTUNITIES MASTER

FUND, LTD.,

Defendant.

- -x

U.S. Bankruptcy Court

One Bowling Green

New York, New York

September 30, 2009

10:04 AM

B E F O R E:

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

HEARING re Debtors' Motion for Entry of an Order (A) Setting Bar Dates for Filing Proofs of Claim, Including Claims Arising Under 11 U.S.C. Section 503(b)(9), (B) Approving the Form and Manner for Filing Proofs of Claim and (C) Approving Notice Thereof (Docket No. 233)

HEARING re Debtors' Motion for Entry of an (A) Ex Parte Bridge Order and (B) Order Pursuant to Section 365(d)(4) of the Bankruptcy Code Extending the Time Within Which the Debtors Must Assume or Reject Unexpired Leases of Nonresidential Real Property (Docket No. 242)

HEARING re Debtors' Fourth Omnibus Motion for Entry of an Order (I) Authorizing the Rejection of Certain Executory Contracts and Unexpired Leases of Nonresidential Real Property and (II) Approving Procedures for Future Rejection of Certain Executory Contracts and Unexpired Leases (Docket No. 243)

HEARING re Debtors' Motion for Entry of an (A) Ex Parte Bridge Order and (B) Order Pursuant to Section 1121(d) of the Bankruptcy Code Extending the Exclusive Periods During Which Only the Debtors May File a Chapter 11 Plan and Solicit Acceptances Thereof (Docket No. 244)

HEARING re Debtors' Motion for Entry of an Order (I) Approving the Debtors' Disclosure Statement, (II) Establishing a Record Date for Voting on the Debtors' Joint Plan of Reorganization, (III) Approving Solicitation Packages and Procedures for the Distribution Thereof, (IV) Approving the Forms of Ballots and Manner of Notice, (V) Establishing Procedures for Voting on the Plan and (VI) Establishing Notice and Objection Procedures for Confirmation of the Plan (Docket No. 223)

Re: Adv. Case No. 09-1440:
Pre-trial Status Conference

Transcribed By: Clara Rubin

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P R O C E E D I N G S

THE COURT: Be seated, please.

Good morning.

MR. HENES: Good morning, Your Honor. John Henes of Kirkland & Ellis on behalf of ION Media Networks, Inc. and the subsidiary debtors.

Your Honor, as the Court knows, we just had a brief status conference in chambers. I know it's only been a couple of minutes since we walked out, but in that couple of minutes I think we've actually come to an agreement, which is nice, and we want to run this by the Court.

THE COURT: Fine.

MR. HENES: We can set up a briefing schedule with all the parties, and this -- let me take a step back, I'm sorry, because I'm not -- for the record, I'll make sure that --

THE COURT: How about a little context?

MR. HENES: Yes, exactly right.

THE COURT: Okay.

MR. HENES: I apologize. I'm just leaving the status conference and coming here.

We have the debtors' complaint that was filed for a declaratory judgment. We have the complaint by Cyrus that was filed for the declaratory judgment. What we'd like to do is basically combine those two adversary proceedings into one. Then what we would like to do is set a schedule where we would have summary judgment motions filed by the debtors, by Cyrus and by the other parties that are the parties to the Cyrus litigation.

We'd like to move this along quickly. Everybody would like to see it resolved promptly. And so what we'd like to ask the Court would be when we could set a hearing date sometime at least twenty-one days from today; so whatever is convenient for the Court. And then based on that hearing date, we would work on the briefing schedule for the filing of summary judgment motions and the filing of responses. And we've talked to all the parties that are involved in the case; everybody agrees with that.

One other comment. The creditors' committee, who is not a party to any of these actions, would like to be able to weigh in. And we have no issue with them weighing in as a party-in-interest. They would not be a party but they could file a brief to put their views forth as a party-in-interest.

THE COURT: Ordinarily in situations of this sort, the creditors' committee would intervene.

MR. HENES: Correct, Your Honor.

THE COURT: Is there objection to having the committee as a party to the companion adversary so that there's no question as to their standing to participate?

MR. HENES: There's no objection from the debtors; Mr. Shore we'll have to ask.

MR. SHORE: No objection.

MR. HENES: No objection.

THE COURT: My suggestion, then, is that the parties, as part of their stipulation consolidating the proceedings, include a decretal paragraph setting forth a consent to the committee's being made a party to the consolidated proceedings for purposes of being heard.

MR. HENES: We will do that, Your Honor. And so if we could get a date from the Court that would be convenient for the Court to hear these issues, then we can work backwards with our stipulation in terms of the briefing schedule.

THE COURT: Okay, I'll provide you with that date following a break sometime later in the hearing. As you probably are aware, I have a fairly tight calendar over the next four to six weeks, and I'll try to find a date that works.

MR. HENES: Thank you, Your Honor. Your Honor, that gets us into the agenda.

Oh, I'm sorry.

MR. SHORE: If I might, Chris Shore from White & Case, for Cyrus. Just on the concept of moving forward, I think what the parties are contemplating here is a consolidation of the two adversary proceedings and 7056 cross-motions simultaneous. We do have to deal with a little issue, which we can talk about, on when we get responsive pleadings. We get a responsive pleading to you, you get a responsive pleading to us, the other defendants get responsive pleadings. So we do have an issue of wrapping the entire dispute into the two adversaries. But I think we can address that in the concepts of scheduling. As I said, we have no objection to the committee joining as a party.

We are proceeding on the commitment of the parties that we'd discussed, that we will go to the district court and try to find out when Judge Stein is available to hear the motion to withdraw the reference. And of course we're reserving our rights if this whole process that we've set up could be overtaken by the motion to withdraw-the-reference process. If at some point Judge Stein decides to take it, then that -- you know, then we'll address that in the context -- in the hearing on the cross-motions in front of Judge Stein.

THE COURT: That's fine. Obviously, there's a separate briefing process that will likely be taking place in the context of the motion to withdraw reference, and I wouldn't presume to suggest how the district court will choose to deal with the subject, but it occurs to me that one rational way for the district court to consider this question would be to review the briefing that has been filed in the context of the adversary proceedings in the bankruptcy court to determine whether or not in fact the issues that are being presented for the termination by the bankruptcy court meaningfully touch on FCC law. To the extent that it meaningfully does not, you can rest assured that Judge Stein will not withdraw the reference. To the extent that it does, I suppose it's within his discretion to decide how much it does. And I don't presume by these comments to telegraph how I believe he should rule, it's entirely up to him, but it occurs to me that perhaps the most efficient way for this to work is for this matter to be fully briefed here, thereby making it a lot easier not only to get to the merits of the dispute but to also determine whether or not there is a meaningful federal question outside of bankruptcy law to be addressed. Candidly, I don't see it.

MR. SHORE: We agree, Your Honor, and we'll brief those.

One other point that I'm reminded -- there's another motion that got filed last night, which is on the calendar, which is the first lien lenders' motion to enforce the DIP order. It's my understanding that that is going to get rolled into this process as well, so that would take that off the calendar.

THE COURT: Off the calendar or on the calendar at the same time as --

MR. SHORE: That's correct, Your Honor.

THE COURT: -- matters are heard in connection with the summary judgment disputes?

MR. HENES: That's correct.

MR. SHORE: Well, yeah, my understanding would be that those issues, which are essentially affirmative defenses to the claims, are going to be raised in the context of that and that we're not going to have a separate briefing of that motion and responses and arguments.

THE COURT: Okay. And this is all happening real time, I recognize that, and perhaps when I take a break to explore my calendar concerns the parties can talk some more about how a stipulation might ultimately look.

MR. HENES: We will do that, Your Honor, and all the parties here want to make sure this is the most efficient way to deal with it, get all the issues teed up at once and resolved at once, and --

THE COURT: Okay. Fine.

MR. HENES: -- we all resolve those issues.

Your Honor, jumping into the agenda, what I propose is if we could handle the uncontested matters first and then go to the disclosure statement, if that works for Your Honor. And if that works, I'm going to turn it over to my partner Mr. Josh Sussberg to come up and deal with the uncontested matters.

THE COURT: Fine --

MR. HENES: Thank you, Your Honor.

THE COURT: -- uncontested we'll start with.

MR. HENES: Thank you.

MR. SUSSBERG: Good morning, Your Honor. For the record, Joshua Sussberg from Kirkland & Ellis on behalf of the debtors. There are four uncontested matters. I will be brief and get everyone to the main event quickly.

A few of these motions are carryover motions that were scheduled from September 17th that were pushed to today. The first item on the agenda is the motion to set a bar date in these Chapter 11 cases. Just to be clear, Your Honor, the order had sought to set the bar date as October 30th in light of the pushing of the September 17th hearing. We've modified the proposed order and we're proposing to set a bar date in these cases of November 13th, 2009 so that we can comply with the notice provisions and publish notice and get notice out to all constituents in these cases. We believe, Your Honor, that with where we stand in theses Chapter 11 cases it's extremely important to begin the claims process so that not only claims come into the estate but that we can begin the reconciliation process and really truly figure out what that claims pool actually will be.

Your Honor, the motion is fairly standard. We followed the local forms, including the Local Rule 11 proof of claim form -- Rule 10, excuse me, Your Honor. And I'm happy to answer any questions you may have. There were no objections.

THE COURT: I have no questions and the motion's granted.

MR. SUSSBERG: Thank you, Your Honor. Your Honor, item number 2 on the uncontested matters is uncontested as of the moment. There had been a limited objection filed. This was the motion to extend the 365(d)(4) deadline.

As I'll explain in the context of the fourth omnibus rejection motion, we've resolved the rejection of American Tower Corporation and we have a mutually acceptable business agreement subject to documentation. And I'll get to that, but they've withdrawn their objection. I'm not sure they're present in the courtroom today, but I believe their attorney was planning to dial in if that was possible.

THE COURT: Is counsel for American Tower Corporation on the line?

MR. GOSSELIN: Yes, Your Honor. Chris Gosselin here, from Sullivan & Worcester, representing American Tower.

THE COURT: Okay.

MR. SUSSBERG: Your Honor, first and foremost, thank you for having entered the ex parte bridge order extending us until the hearing today because of the deadline expiring on September 16th. We were seeking a ninety-day extension under 365(d)(4) so that we may continue the reconciliation process and review of our leasehold interests in light of the various activities that have gone on in the case. We believe more time is appropriate and, as a result, satisfy the cost standard under 365.

As I mentioned, the one objection that was limited has been resolved. I'm happy to answer any questions Your Honor may have.

THE COURT: I have no questions, but I'll ask counsel for American Tower Corporation simply to confirm that your client's objection has been accommodated to your satisfaction and that it's now withdrawn.

MR. GOSSELIN: Yes, Your Honor, we can confirm that. It is now withdrawn.

THE COURT: Okay. That motion is granted.

MR. SUSSBERG: Thank you, Your Honor. Your Honor, item number 3 on the agenda, as I mentioned, is the fourth omnibus motion to reject certain contracts and leases. It's a continuation of the debtors' efforts to reconcile contracts and leases and shed burdensome agreements. Your Honor, this motion includes the rejection of a microwave license, a programming license agreement with Twentieth Television with respect to the show Boston Legal. And it also includes a master lease, master management agreement and asset purchase agreement that all relate to and deal with a sale leaseback transaction with American Tower Corporation.

Papers were submitted objecting to the relief that the debtors had sought, which we had sought prospective as well as retrojective rejection -- retrospective rejection, excuse me, Your Honor.

THE COURT: You got the word right that time.

MR. SUSSBERG: And I'm happy to say that we were able to resolve some thorny legal issues before bringing them to Your Honor in the context of an overall business arrangement.

And I would like at this moment to read into the record some of the terms of this deal that we've reached with American Tower, in fact reached it last night. So it's subject to formal documentation, which we intend to present to Your Honor in the very near future. But, for the record, and so it is clear, the parties intend to amend and restate the various agreements relating to the sale leaseback transaction. And, specifically, the agreements will exclude twenty-seven analog leases which relate to towers that the debtors are no longer able to operate.

The debtors will continue, and the agreements will provide for the continuation of, twenty-two digital sites with respect to the debtors' broadcast operations. The parties have agreed that going forward with respect to those twenty-two digital sites that the debtors' responsibility for common area maintenance charges going forward will be thirty percent of the total cost charged on account of those CAM charges.

In addition, as far as the takedown costs are concerned with respect to the analog equipment that is remaining on the towers, as noted in the motion, the takedown costs are estimated to be between 3 and 4 million dollars, and ION and American Tower have agreed that ION's responsibility with respect to those takedown costs will be 1.2 million dollars, payable over the course of 2010 on a quarterly basis.

With respect to the remaining analog property that's sitting on the towers, ION will enter into an agreement that provides American Tower with access and title to those pieces of equipment so that they may use or otherwise sell that equipment.

In addition, three towers that are stated and set forth in the motion itself that were subject to a management agreement that were unable to be transferred back in 2001 in connection with the sale leaseback will in fact be transferred in connection with this overall arrangement.

And in addition, the parties will agree to, and are in fact in the process of, reconciling an administrative claim that will be allowed for American Tower in connection with these cases and the payment of rent that would otherwise be due and owing on account of some of these leasehold obligations.

Your Honor, the company believes that they've effectuated significant cost savings in connection with this resolution, are very happy with the result and look forward to documenting this agreement and presenting it to the parties-in-interest and Your Honor for consideration. But we did want to make sure that those business terms were reflected on the record and so ordered.

THE COURT: That's fine. I think, at least from my perspective, you said all that very clearly. But let me just ask if counsel for American Tower Corporation has anything to add to what has just been stated or any clarifications.

MR. GOSSELIN: Your Honor, we have only one clarification. In our discussions, we discussed a number of contracts which have not been either -- have not been dealt with in a motion to assume or reject that, going forward, will be assumed by the debtors. That list has yet to be finalized. But we are anticipating assumption of a number of other contracts which American Tower has with ION.

THE COURT: Is that the only clarification?

MR. GOSSELIN: Yes, Your Honor.

THE COURT: Any comments, Mr. Sussberg?

MR. SUSSBERG: Your Honor, it's just going to be a global settlement, so he's correct, we're going to deal with all issues at one time.

THE COURT: Fine.

MR. SUSSBERG: Thank you, Your Honor.

THE COURT: Except --

MR. GOSSELIN: Thank you, Your Honor.

THE COURT: Except for the American Tower, I'll call it, business arrangement, as described on the record, is there anything else with respect to this motion that needs to be presented?

MR. SUSSBERG: No, Your Honor, that is all.

THE COURT: The motion is approved.

MR. SUSSBERG: Thank you, Your Honor. Your Honor, the last item on the uncontested agenda is an important one, and that's the motion to extend the exclusive periods under the Bankruptcy Code. Your Honor, this motion was filed back on September 2nd. And, again, thank you for entertaining the bridge order that was entered, bringing us to the hearing today. The initial 120 (sic) exclusive filing period expired on September 16th. Today we are seeking a 90-day extension of both the exclusive filing period as well as the exclusive solicitation period, which would bring us to December 15th, 2009 and February 13th, 2010, respectively.

Your Honor, the debtors, as set forth in their papers with respect to exclusivity, and which papers have been unchallenged, are managing their estates and business appropriately and responsibly. Our first goal in these cases, as Your Honor was aware, to secure financing, and we were able to do so, although it took quite some time.

And since then, we have moved through the process of reviewing contracts and leases, shedding burdensome obligations and, obviously, which we'll get to later today, moving to the plan process and the disclosure statement.

And I think it's important to note for Your Honor that our exclusivity motion, which was filed almost a month ago, noted that the debtors believed there was propriety in getting together and potentially bridging the gap between the first lien lenders and the unsecured creditors' committee who represent all unsecured creditors in these cases. And, in fact, as reflected in the filings last night, and as we'll get to during the disclosure statement hearing, we were successful in bridging that gap and reaching a global resolution with those parties.

As a result, we believe it's certainly appropriate, and we've satisfied the cost standard, to extend the exclusive periods so as to avoid any unnecessary third-party filings of plans and continue our process and seek to effectuate our ultimate goal in these cases, which is the emergence from Chapter 11.

With that, Your Honor, I'm happy to answer any questions you may have.

THE COURT: My question really is to the assembled multitude, as to whether or not there are any issues with respect to the requested extension of exclusivity.

MS. LEVINE: Your Honor, Sharon Levine, Lowenstein Sandler, for the committee. We -- first, we thank Your Honor for extending our deadline to file papers. As a result of the additional time, we were able to work through the weekend and right up until late last night, probably early this morning, in order to resolve open issues with the committee. And, in fact, we have no objection and are standing here shoulder to shoulder with the debtors in order to move forward with the disclosure statement and plan.

THE COURT: Fine.

The motion to extend exclusivity is approved.

MR. SUSSBERG: Thank you, Your Honor.

MR. HENES: Your Honor, that brings us to the hearing on the motion to have the disclosure statement approved and the solicitation materials approved.

Before I jump into the main event, I want to point out three pieces of good news, although one piece you just heard: that we did reach an agreement with the -- or a global settlement with the committee and our first lien holders that resolves all issues the committee would have in connection with these cases, including issues related to what we're going to discuss in the adversary proceeding relating to the lien issue, as I'll call it.

And I also want to point out that the committee is made up of trade creditors but also the trustee for the second lien holders. So it is a committee not just made up of general unsecured creditors but also the second lien holders who, as you know, the debtors believe, are out of the money.

But as part of that settlement, we did enhance the recovery that the unsecured creditors and the second lien holders would be receiving, and so we believe that that's good news. And as you heard Ms. Levine say, the creditors' committee is standing shoulder to shoulder with us to move this process forward.

Second piece of good news, Your Honor, is that we received what's called short-form approval from the FCC; we received that on September 28th. As you know, I believe our plan is contemplated on being able to emerge from Chapter 11 into a trust while we get the long-form approval, or the overall approval, for the change of control of the shareholders here.

We got that approval, which means that we've gotten -- we can -- as soon as we get the plan confirmed we can emerge from bankruptcy. We believe that's very good news.

And then, finally, we also had -- the third piece of good news is we had an objection that was filed by the United States Trustee's Office to the disclosure statement. I don't know if anybody from the -- yes.

Hi, how are you?

We've been able to resolve that issue and that therefore there's no objection with respect to the United States Trustee.

Which leads us to the main event, and which leads us to Cyrus. Cyrus is the last man standing on objections to the disclosure statement. Ironically, we don't think they have standing, but I'm not going to get into that issue today.

THE COURT: I know, but it's a funny line.

MR. HENES: Thank you. We try. We came up with that one about 4 this morning.

Your Honor, there were three -- there's really three themes, I would say, to Cyrus' objection to our disclosure statement. First one is they believe that there's parts of our disclosure statement -- or, I'm sorry, there's parts of our plan that are patently unconfirmable, and I'll go through those briefly. We don't believe that's accurate. We believe that our plan is confirmable. We believe there may be issues with respect to confirmation but those should be heard at the confirmation hearing.

Second, there was a request in the objection to the disclosure statement for the Court to withhold approving the disclosure statement at this time until the issues relating to the adversary proceedings are determined. We don't believe that that's appropriate, and I'll talk very briefly about that as well.

And then, finally, there were just plain-old they didn't believe that we properly disclosed things. What Cyrus did was they sent us a -- I'll call it an appendix, to attach. And for the most part, we are okay with that. I will point out two issues that I hope we can work through with Cyrus that we don't believe are necessarily either appropriate or written properly to go out, because we don't believe there's any evidence to back up the assertion at all, and I'll point those two things out and we can talk through those.

So first going to the issues of the plan being patently unconfirmable, and I won't go into great detail about the law. We presented that in our response. But the disclosure statement is supposed to be about disclosure. It's not supposed to be a hearing on confirmation issues.

The first issue that was raised by Cyrus was that the plan is patently unconfirmable because the debtors improperly are giving the vast majority of the value of the entity of the first lien holders and they believe that the first lien holders do not have a lien against the FCC subsidiaries.

I submit that that's clearly a plan issue. I think, based on the adversary proceedings that we're going to have and consolidate and put in front of the Court, there's clearly a difference of views. But to the extent the debtors are successful in that litigation, we will be able to get our plan confirmed. And I think that's clearly a confirmation issue.

The second issue related to an absolute priority rule objection. Under our plan, really for mechanical purposes, we provide that the intercompany interests are -- will remain in place. There's no value being distributed to them. They're remaining in place so when we emerge from bankruptcy we emerge with the same organizational form.

The -- Cyrus believes or argues that that is a violation of the absolute priority rule based on value going to the intercompany interests. Again, we believe any absolute priority arguments are confirmation issues. We believe that our plan is properly formatted and mechanically works and we can have that issue at the confirmation hearing.

The third issue relates to releases. We understand what the law in the Second Circuit is on releases. We will be providing evidence at the confirmation hearing on why we believe the releases in our plan are proper. The U.S. Trustee also made some objections to the releases, and we will deal with that issue at confirmation. Again, we believe that's a confirmation issue. Clearly, it does not make our plan patently unconfirmable.

And then, finally, there's a classification issue that they raise. What we've done in our disclosure statement, and Mr. Sussberg will walk you through the blackline of the disclosure statement, but we have added a class. What we've done is we've added a class, which is the second lien notes subsidiary guarantee claims, and this is -- we didn't spell out 124 different classes; we combined them all, but they're all specifically to each subsidiary, and we set that forth in the disclosure statement. That class will not be getting any value under the plan.

However, we also have a class, which is the second lien note claims, which are the claims against ION Media Networks, Inc., which is the holding company. That -- they will be getting a distribution from that entity based on the settlement that we've reached with the creditors' committee and the first lien holders.

We believe that that does -- we don't believe there was a classification issue to begin with. We do believe that that clarifies it. And that also would be a plan issue.

So those are the four issues that they raise as being patently unconfirmable. We don't believe any of them make the plan patently unconfirmable. They're all plan issues; we should hear them in the context of the confirmation hearing.

Second issue, Your Honor, is timing. Cyrus is asking you to withhold your ruling on the disclosure statement until we resolve the adversary proceedings, and I believe they said at least until the motion to withdraw the reference is decided.

Based on what we've just talked about and getting the briefing schedule moving, trying to get that heard quickly and getting the resolution to those issues, we see no reason to push off the confirmation hearing. These are confirmation issues; they'll be resolved in the context of these adversary proceedings. And we should set a solicitation -- we should get solicitation approved, get the votes in and move forward to confirmation.

The only real issue that they raised with respect to timing was the cost associated with solicitation, but that cost, Your Honor, is approximately 100,000 dollars. The way the company looks at it is that 100,000 dollars of cost is well worth the bet that we're going to prevail, prevail quickly and be able to get the plan confirmed. If we don't and we have to go back to the drawing board or we need to modify our plan and modify our solicitation, we believe the investment of that 100,000 dollars is still a good investment in the context of these cases.

And so we see no reason to hold off on the timing of the approval of the disclosure statement, and we want to move forward with solicitation and move forward to confirmation.

The final issue on the disclosure objections, as I said, I think we've resolved the vast majority of them. Just to point out, really, the two issues, and we may -- this may need to be changed based on the adversary proceeding schedule, there's two comments that they've made. One is that they argue that the debtors have improperly attempted to distribute a surplus estate value to holders of DIP facility claims. And the reason they say that is because they assert that the DIP loans are trading at 170 cents on the dollar.

We -- they've raised this issue with us; we've looked at that. We have not been able to find any evidence that that's actually what's occurring here. We're not sure it's relevant anyway, but that's beside the point. We don't -- just throwing in a number without any evidence to back it up doesn't seem to be an appropriate thing to throw into a disclosure statement. And so we think that that should come out.

Second issue, Your Honor, goes to valuation, and this one's a little bit more technical. We know that Cyrus -- or we believe that Cyrus is going to object to the valuation under our plan. In their, I guess, their appendix, what they say is that they believe the value of the licensed subsidiaries, which represents -- likely represents 95 percent of the reorganization value of the company, is between 700 and 900 million dollars in value. But then they say that, while they believe this range of value is reasonable, Cyrus makes no representation as to its accuracy.

Again, it just seems to be sticking a finger up in the air, testing the wind and throwing out a number. I have no issue with them saying that they believe that maybe our valuation's too high and that they want to object to it, but just to throw numbers out of the air without any work or analysis behind it seems to be inappropriate.

Other than that, Your Honor, there might be a little bit of cleanup on this, but I think the company is fine with what has been prepared, other than those two issues, and we would attach that to our disclosure statement to resolve the disclosure issues.

With all that being said, Your Honor, we believe our disclosure statement provides adequate information to allow creditors to vote on the plan. We believe it should move forward and be approved so we can start the solicitation process, and we want to just move forward with this case and have everybody's rights reserved and be able to be heard and decided and have this plan -- have this company emerge from bankruptcy as promptly as possible.

THE COURT: Okay, thank you.

MR. HENES: Thank you, Your Honor.

THE COURT: I think it may make sense for me first to hear from anybody, like the creditors' committee or the first lien holders, if they wish to be heard at this point, that support the debtors position. And then since Cyrus is really the principal objector, if not the only objector at this point. I'd like to hear from Cyrus last after having heard anybody who says yes, I should approve this first. That's not -- if you don't want to say anything, that's fine too.

MR. DIZENGOFF: Thirty seconds, Your Honor. Ira Dizengoff, Akin Gump Strauss Hauer & Feld, on behalf of the ad hoc group of first lien lenders. We obviously support the debtors' plan. The debtor and the first lien lender group and the creditors' committee have worked very diligently to get the plan and disclosure statement where it is. We think it provides adequate information.

Mr. Henes went through the recitation about why Cyrus' objections are wrong and should be postponed to the confirmation hearing, and we urge you to approve the disclosure statement.

THE COURT: I'd like to ask you one question; I asked you this question during the DIP hearing some number of months ago as well. Since your group is really the beneficiary of the restrictions that are imposed on the rights of second lien holders under paragraph 11 of your intercreditor agreement, do you take any position at this point one way or the other as to the standing question that has been alluded to by Mr. Henes in his remarks? Everybody says that Cyrus has no standing, but everybody is dignifying their objections by arguing them and treating them as if I can fully hear them. Why should I hear them at all?

MR. DIZENGOFF: Your Honor, I agree, you shouldn't hear them. I think that the issue on standing is front and center before the Court. I think, for purposes of the record, they'll argue that they do have standing and put that paper before you. But I think, Your Honor, there's standing on a number of fronts; one is the intercreditor. And, additionally, we filed a motion saying that they violated the terms of your DIP order. On those two fronts we think, actually, Your Honor should tell Cyrus that they have no standing and that we can kind of put an end to the sideshow of Cyrus' objection to the plan and the disclosure statement.

So I think it's a hundred percent right. I think that issue will get teed up in connection with the cross-motions for summary judgment. And I think -- I didn't reference this earlier, but I think our clients will intervene as well in the stipulation with the debtor and the creditors' committee as a party in the action, and that issue will be front and center and be briefed before you. But I think it's properly -- I think you're dead-on, Your Honor; they don't have standing to pursue these objections.

THE COURT: All right, thanks.

MR. HENES: Your Honor, if I may, may I be heard on this for one minute, at the risk of saying too much? We did put in our papers, as you know, Your Honor, that we don't believe that they do have standing. And just for the record, one of the issues here that I think Cyrus is being a little bit cute on is Cyrus is making the -- I think they've asserted this from day one; they've said that the first lien holders do not have a lien on the FCC licenses and therefore the first lien holders and second lien holders are unsecured creditors with respect to the FCC license subsidiaries.

The problem with that is they leap over the liens that were one hundred percent granted to both the first and the second lien holders, which are liens in the proceeds and liens in the right to proceeds. And there is case law, and I think very good case law, that says that they -- that a lender can get a lien on the future right to proceeds and to the proceeds of collateral. And that is a lien, and they say that that lien is perfected at the time the financing statement is filed.

Interestingly, here that doesn't really matter because under the intercreditor agreement, even if it was determined that those liens were invalid, unperfected or otherwise no good, they're still bound, Cyrus, to the priority scheme under the intercreditor agreement and the security documents.

One of the reasons I didn't get up and say this in the beginning was because we just had the status conference and we're talking about putting together these adversary proceedings and having them heard all at once. But at the end of the day, I do believe that this is a waste of time. I believe they do not have standing. I believe there's case law to support that they don't have standing. And they don't have standing to make the objections that they're making. They don't have standing to make the objection that our plan's patently unconfirmable. They don't have an object -- they don't have standing to say that the first lien holders and the second lien holders do not have liens against certain assets of the FCC license subsidiaries. But they're trying to do that and they're being cute by trying to leap over this issue.

They're clearly, the first lien holders and second lien holders, secured creditors of those FCC licensed subsidiaries. And the value of this company, according to the debtors and according to what we've put in, does not exceed, whether you look at it holistically or on an entity-by-entity basis, the value of the first lien claims. And as a result, they are entitled to all the value. And to make the argument that they're an unsecured creditor, the second lien holders and the first lien holders, ignores the liens that were given. And the only way they really can be an unsecured creditor is on a deficiency claim basis, but there's no value for that deficiency claim.

So we do believe that the Court could say that Cyrus does not have standing to move forward with this disclosure statement objection. The Court could say that Cyrus doesn't have standing later on, which we know they're going to object to the plan. And that's the issue, really, that was teed up under our adversary proceeding.

So I just wanted to make that clear for the record of the debtors' position.

THE COURT: Okay. Thank you.

MR. HENES: Thank you, Your Honor.

MS. LEVINE: Your Honor, just very briefly on behalf of the committee. The committee obviously supports the entry of a disclosure statement. We believe that the -- we reached a tipping point in terms of the consideration that's being provided to the committee under this plan, bouncing back and forth the fact that we believe that we may actually be the only party that does have standing and also the only party that may not have consented to jurisdiction before Your Honor on these issues, the -- balanced against structural and other arguments that were made to us in terms of how the debtor might change the course of this case other than simply modifying the plan if in fact we didn't reach an accord.

We tried hard to bring Cyrus into those discussions in a way that we thought made sense; unfortunately, it didn't happen. But with that, Your Honor, we believe it's appropriate for Your Honor to approve the disclosure statement and move forward towards confirmation.

THE COURT: I didn't quite understand that reference to the jurisdiction of the Court.

MS. LEVINE: Your Honor, the way we understand jurisdiction to the district court, it's possible to consent to jurisdiction in the bankruptcy court if in fact the honor is raised before Your Honor. So one of the things that we appreciated was Your Honor's extending our deadline with regard to objecting to the disclosure statement, both so we could accommodate the debtor and the first lien holders' request not to try this issue in the press. But we did serve them with extensive pleadings, which included references to disclosure but also references to the fact that the committee did not ever raise the interplay between the two statutes before this Court and, therefore, may have been the only party that actually preserved the issue for the district court.

THE COURT: All right.

MS. LEVINE: Thank you.

MS. COHEN: Your Honor, Hollace Cohen on behalf of The Bank of New York Mellon Trust Company as both collateral agent under the security agreement that has the intercreditor provisions that everybody has been talking about today, and also as the first-priority notes trustee.

Just briefly, we concur in the debtors' comments and analysis with respect to the terms of the intercreditor agreement and as they relate to standing, and believe that Cyrus does not have standing on the issues that they seek to argue here. Thank you very much.

MR. RUBINSTEIN: Good morning, Your Honor. Vadim Rubinstein of Loeb & Loeb. We're counsel to Wells Fargo as the first-priority administrative agent with respect to the first lien pre-petition debt.

And I would just echo what Ms. Cohen said with respect to our position. We do believe that the intercreditor agreement precludes Cyrus from raising any objections and from having standing before this Court, and we support the debtors wholeheartedly in that regard.

THE COURT: Thank you.

Mr. Shore, even though there are significant objections to your, even, standing up, you're welcome to stand up. But just because you're standing up doesn't mean you actually have standing.

MR. SHORE: Thank you, Your Honor. Chris Shore from

White & Case, for Cyrus. I mean, the fact's clear. We represent one secured creditor pressing a legal objection in the face of a deal between the first lien holders, the unsecured creditors' committee, the debtors, and apparently everybody else in the room. And I think many of us have had the assignment of having to represent someone who might be perceived of getting in the way of a plan process.

We're not running from the dispute, though. We've raised the issue; we think it's a bare legal issue which needs to get resolved in a manner that provides a fair allocation between the first lien- and second lien holders. This is not getting in the way of a plan being confirmed. It's only getting in the way of a plan being confirmed that provides substantially all of the value to the first lien lenders, none of the value, or nearly none of the value, to the second lien holders, premised on the legal issue which is framed.

And I think the debtors framed it exactly right in their letter to the Court September 15th. The first issue they raised that had to get resolved: Do the first-priority secured parties have liens on the FCC licenses and/or the right to proceeds? And if so, does the intercreditor agreement prohibit Cyrus from contesting? That's the issue. That's the issue which we need resolved.

I agree with Mr. Henes; I think the rest of the disclosure statement objections fall away at this point except for should we be proceeding to solicitation without getting some color on that issue? We're not going to have a final ruling from anybody in that time period. But Mr. Henes said we can proceed with this plan because we think we're going to win. What he didn't address is what if we lose. And that's the issue that I think we're going to need to resolve now.

THE COURT: Actually, Mr. Shore, I think he did address the what-if-we-lose question by saying we're prepared, and others with economic interest in a case are prepared, to invest 100,000 dollars in a solicitation process, we're that confident we're going to win and, if by chance we don't, that's still money well spent because we've moved the process along. That's how I've heard their argument.

MR. SHORE: And as another stakeholder in this case, I think that the 100,000 dollar estimate for resolicitation in the context of all these parties being involved in the solicitation is probably very optimistic on the part of the debtors.

THE COURT: I take it as a realistic appraisal. It may be on the low side, but I have no way of estimating that.

MR. SHORE: So the issue --

THE COURT: I accept it for what it's worth.

MR. SHORE: Okay. So the issue to be addressed, it seems to me, when you look at the first statement by the debtors: Do the first lien lenders have a lien on the FCC licenses? It is the key issue and it addresses the standing issue, absolutely addresses the standing issue, which I can address in a minute.

The intercreditor agreement provides that a lien is granted on collateral, capital C, subject to section 2.2. Section 2.2 says the debtors are not providing a lien on anything that they're not allowed to give pursuant to law. Section 5.7 of the intercreditor agreement makes very clear that with respect to the FCC licenses they're only granting liens on the licenses to the extent permitted by law.

If the law is, as it was then and is now, that a debtor may not grant a lien on an FCC license, it is not collateral. And all of the interdictions that had been raised by the debtors and everybody else have left out the language subject to section 6.2 and just said the licenses are defined as collateral and you can't attack the collateral.

We're not attacking a lien which was granted on the basis that it was unperfected. We're taking the position that a lien was never granted on the FCC licenses at all. And if no lien was granted, there's no interdiction on us saying that any more than we could raise issues with respect to whether there's a lien on post-petition avoidance actions or anything else. A lien was never granted on that.

So that raises the issue as to whether or not a plan which is premised on a lien existing on the FCC license is so structurally flawed that we shouldn't be sending it out right now without getting a resolution to that issue, and, two, the issue which Mr. Henes raised, which is one of proceeds, which I'll get to in a bit, but I will make clear at the beginning, the law -- when he says there's good law that a lien attaches on proceeds, that, it seems to me, is the issue that's going to require substantive interpretation of federal law, federal nonbankruptcy law, because the Eleventh Circuit's gone just he opposite way and said you cannot grant a lien on proceeds.

And so to the extent that they were not permitted to grant a lien on the licenses or the proceeds at the time that the security agreement was entered into, we're not challenging liens on the licenses; we're just saying a lien was never granted, which was a right which everybody preserved under that agreement, because it said only to the extent permitted by law.

So with respect to today's objections, subject to a little bit of a discussion on plan mechanics, which I don't think there's any disclosure on, I think we appreciate that the debtors were willing to let us put in an appendix which discloses with respect to the adversary proceeding. I think the issues with respect to releases with the new disclosure, I think, can be pushed to confirmation.

So the only issue today is, in the absence of a legal determination with respect to the FCC license issue, whether it attaches to the licenses themselves and whether it attaches to proceeds: Should we be proceeding now, and have they convinced Your Honor that it's worth spending 100,000 dollars or 200,000 or 500,00 dollars of estate assets to resolve that -- to take that issue out now rather than wait forty-five or sixty days, whenever Your Honor can set that date? Because that is the outside date for either a withdrawal of the reference or for Your Honor's ruling. Should we do that now or not?

THE COURT: What's the outside date?

MR. SHORE: Well, the outside -- if Your Honor sets a hearing on the cross-motions for summary judgment, I think we'd take the position that in the face of a mandatory withdrawal that Your Honor shouldn't, even in the absence of a stay, be doing that and mooting out, as the debtors are asking you to do blatantly in their papers, overtake the process before the district court has a chance to rule.

But Your Honor is free to take whatever position you want, and you've articulated some position, though not a binding position or any recommendation to the district court, as to how you see that proceeding going. But that gives us a date at which we're going to either have the district court saying sorry, guys, this issue is up at the district court and we're going to resolve it when we're going to resolve it, or Your Honor's going to rule in the context of that unstayed motion to withdraw the reference.

THE COURT: Okay. Let me tell you how I see this, and

I appreciate the fact that you have constructively narrowed the issue. The issues presented in the adversary proceedings I view as somewhat comparable to issues that were presented in an adversary proceeding in the Charter Communications bankruptcy case by JPMorgan Chase at the very outset of that case. There, and there is a ruling on that matter which you've probably read, I concluded that the adversary proceeding brought by JPMorgan Chase was a core proceeding. That litigation sought a determination that reinstatement was not permissible under a certain senior credit facility. And as we speak, I am going to be hearing this afternoon certain arguments in that case, so this is very much a current topic in my mind.

The reason I bring it up is that in that bankruptcy case I considered issues that related to confirmation of a bankruptcy plan in a separate adversary proceeding on a schedule that allowed for confirmation to go forward and for issues that were in dispute with respect to that adversary proceeding to be heard simultaneously.

I actually see no reason why that shouldn't happen here. Indeed, it occurs to me that the issues that you are raising in your adversary proceeding against the debtors and others, and the issues raised by the debtor in its adversary proceeding against you, while going to intercreditor issues and your entitlement to standing, et cetera, also go to the heart of the plan and whether or not the plan as structured permissibly allocates value to the first lien holders.

There could not be a more central bankruptcy question than that. And it seems to me, as a result, that there's absolutely no reason, from a timing perspective or from the disclosure perspective, to postpone moving forward expeditiously to get to the answer to those questions.

So my response is I have given the Cyrus objections careful consideration, and as you have refined them in your remarks today I've determined that we should proceed with disclosure. I believe the disclosure statement is not only adequate but quite readable. And I think that the frequently-asked-question format which has been adopted is actually a very useful tool that I have not seen in many other disclosure statements; that addresses the issues that a reasonable creditor would want to know the answers to and does so in an informative way.

Since there are no substantive issues as to the fairness of that disclosure, and the issues that you now press are fundamentally confirmation-type objections, I will defer to the business judgment of the debtor and the creditors' committee that endorses the notion of moving forward and spending, if it's 100,000 or 200,000 dollars, whatever it may be, to move the process forward. I rather assume that, while nobody has articulated this, that the argument on their side would be the longer this company remains in Chapter 11 the worse it is, and the sooner we can get to the exits the better it will be. I further understand that, since the FCC has given short-form approval to the transaction set forth in the plan, that the effective date will not delayed in any meaningful way. That being so, we should move forward.

So your objections to the disclosure statement, to the extent they go to timing and confirmation issues, are overruled, obviously preserving all of your rights on the merits as the parties develop a substantive briefing schedule in connection with the consolidated or to-be-consolidated adversary proceedings.

Additionally, I assume that, to the extent that we have a schedule that relates to confirmation, that some of the issues raised in the adversary proceedings may find their way into confirmation objections. In part, for that reason, it seems to me that it makes sense for the parties to consider consolidating not only the adversary proceedings but consolidating the schedule with a schedule that makes constructive sense in respect of the development of a schedule for confirmation.

I don't particularly see a reason why we should have oral argument on the consolidated adversary proceedings on one day and some day down the road have maybe the same kinds of arguments in the context of the confirmation hearing. I also note that it is entirely possible that, even though these legal issues are being presented to the Court, at least initially, in the context of cross-motions for summary judgment, that the Court's disposition of the legal issues may well be informed by the evidence and testimony to be presented to the Court in the context of a confirmation hearing, particularly as it relates to valuation, which I understand to be in dispute.

I'm going to take a break now, you can talk about scheduling issues, and I'll let you know when I think I might have time for either a hearing in connection with argument on cross-motions for summary judgment or confirmation. And during the break I would like the parties themselves to discuss the suggestion that I've just made. I'm not mandating at this point that there be a, in effect, consolidated hearing on confirmation and the cross-motions in respect of the declaratory judgment actions as much as saying that it seems to me that would be an efficient way to proceed. If the parties disagree with that, I'm perfectly prepared to hear discussion after you've had a chance to confer.

Let's take a --

MR. SHORE: May I --

THE COURT: Yes.

MR. SHORE: -- be heard on just a few quick points that kind of come out of the hearing? And maybe it's for record purposes only, but I think --

THE COURT: Okay.

MR. SHORE: -- it matters in the context of disclosure. First of all, I think the disclosure statement should contain a disclosure of whatever process we agree upon that lets people know that there be a resolution or a resolution is teed up.

THE COURT: I think that's a fair comment, yes.

MR. SHORE: Second, in the context of their response to our objections and on the record today, the debtors have made various statements about the mechanics of how the plan process works at the subsidiary debtors, which I understand are not classifying claims separately with the guarantee claims. I think there needs to be disclosure about how that mechanic works, for an important reason. In the objection, it sounds like what the debtors are saying is that the first lien lenders are taking the equity of the companies and then distributing it back to ION. The -- that raises -- right, you've got a subsidiary debtor, so you've got satellites of debtors with a FCC licensee sub and an operating company paired with it. That company, the licensee sub, is a Chapter 11 debtor. It's got a plan on file with this Court; it just happens to be a joint plan with all the other debtors.

When Mr. Henes says they're preserving the capital structure, that's just not a nicety here; that is required by FCC law. That is, you can't change the parent of that FCC licensee sub without FCC approval.

So what I do understand happening under this plan is that the first lien lenders are gifting or, as it's described in the objection, they are waiving their claim, I guess, with respect to their secured claim at that debtor, to allow a distribution to equity.

This is not -- when I raised the absolute priority objection, that's not just a nicety. I need to know, and I think second lien lenders need to know, whether the structure set up is a transfer of the equity to the first lien holders and then on to ION, which would be one plan structure, or it's a gifting of the liens to ION Media, Inc., the parent, in which case that raises a whole nother set of issues.

But, in fairness, there needs to be disclosure about that. They've stated it on the record, they stated it in the pleadings; they can put that in the disclosure statement.

Third --

THE COURT: Let's stop you --

MR. SHORE: Sure.

THE COURT: -- before you get to third --

MR. SHORE: Okay.

THE COURT: -- because point one that you raised seems not controversial. The procedures that are adopted by the parties relating to dispute resolution should be disclosed. That's apple pie. That's not a problem. The second issue you've raised sounds more like the chart that I saw in your objection as it showed, in a horizontal fashion, value skipping over certain intermediate entities.

I heard you say not twenty minutes ago you didn't have any problems with disclosure, and the only thing that you were really focused on, in light of the fact that you submitted additional disclosure in an exhibit, was the question of timing. This is not an opportunity to revisit matters that you could have raised substantively twenty minutes ago.

MR. SHORE: Maybe I made a mistake, Your Honor, but what I have in my notes was subject to what I have to say about plan mechanics and disclosure about plan mechanics. I have no problem with the disclosures. And what I was intending to do was get to that point on plan mechanics.

And there's another point, so if I could skip to 3 and I'll raise it --

THE COURT: Let's not use plan mechanics as a way to have a second bite at the apple.

MR. SHORE: I'm sorry and, as I said, I apologize.

THE COURT: Okay, let's hear the rest of what you have to say.

MR. SHORE: The other is this issue of proceeds and virtual proceeds and the economic value analysis that's set forth in footnote 9 of the debtors' objection where they're saying we're not selling the licenses.

THE COURT: Well, they're your objections, so it must be footnote 9 of some other pleading.

MR. SHORE: Oh, sorry, footnote 9 of their reply, which sets forth this analysis of this is a virtual proceeds case, right? The economic value's being transferred, were not selling the license and it's not just proceeds like we know proceeds, which is, the licensee subs are generating revenues and have apparently some kind of intercompany claim for that revenue, which may or may not be subject to the first lenders' liens.

But with respect to the license itself, I think there needs to be disclosure because then we would put in our appendix the response to that disclosure of this notion that somehow you've got something that's in between the license itself and cash.

THE COURT: I don't mean to suggest that disclosure statements are immediately tossed in the trash as soon as they're received, but I know that's true. You are looking for something that seems to me to be entirely -- and I don't -- just convince me where I'm wrong on this -- entirely beside the point, at least as to this last issue.

The disclosure statement tells anybody who reads it that second lien lenders are getting, now, a right to participate in five million dollars at some level and a hope (ph.) certificate. That's what the plan says. And the plan is predicated upon substantial value going to the first lien holders; that's what your objections are all about.

Is there really anything more that somebody needs to know other than the fact that Cyrus is out there to object to all aspects of this treatment because you have issues with respect to the FCC licenses? It seems to me that one paragraph would be sufficient disclosure instead of hundreds of pages. And I don't know that the nuance that you're now bringing to the disclosure statement advances the ball with respect to what somebody voting on the plan needs to know.

MR. SHORE: The debtors have interjected the possibility that these objections are vote-dependent. To the extent they are vote-dependent, a second lien holder is entitled to know, in voting for the plan, whether to accept its share of five million dollars and a hope certificate versus voting to reject the plan, which the debtors disclose could lead to no recovery on their part.

THE COURT: It's a deathtrap plan; I've read it.

MR. SHORE: Well, I think the deathtrap's out now.

THE COURT: Is the deathtrap gone?

MR. HENES: The deathtrap's gone, Your Honor.

THE COURT: Well, when did that leave?

MR. HENES: About today --

UNIDENTIFIED SPEAKER: Last night.

MR. HENES: Last night, maybe 6 o'clock this morning.

THE COURT: That left last night? That was my favorite part of the plan.

MR. SHORE: So in the context of assessing those two options, I think, in fairness, the debtors do need to disclose their legal positions. Leave aside the -- I don't care about the law or anything else. I want -- if the debtors are taking the position this is some sort of virtual proceeds case, I need the statement there, in which case I'll respond to it.

THE COURT: What does the debtor say about all this? And here I thought we'd accomplished so much by just getting down to one issue where I could rule and then I'd go back and get a date and we'd be done.

MR. HENES: I though we did too, Your Honor. Your Honor, on the first point, we're fine adding in the procedure; we think that should --

THE COURT: Sure.

MR. HENES: -- be in there. We agree, it's American pie.

Taking the last point, here's the issue. One, I think we've properly disclosed everything. There's two issues. One, this isn't about a virtual sale or anything else. This is about we believe that the first lien holders and the second lien holders have a lien on the right to the proceeds. That means that there is a secured claim. It's not about selling it and we need proceeds. There's an intermediate step between the FCC licenses and the proceeds, which is the right to proceeds, which is a general intangible, which is a perfected security, and which we make very clear that's our position.

I don't think we need to continue to draft language to try to explain every nuance of our argument about why our plan is proper, and I don't think that Cyrus needs to -- I don't think it's actually appropriate necessarily for Cyrus to be including lots of disclosure in our disclosure statement.

THE COURT: I, frankly, agree with that. I think that it's apparent to a reader of this disclosure statement that the debtor takes the position that the plan is appropriate and confirmable on the basis of a lien in proceeds of the FCC licenses by means of the grant of a lien in general intangibles. I think that's generally understood.

I think it's also understood that Cyrus, for itself, and I suppose indirectly on behalf of other holders of the second lien debt, takes the position that the FCC licenses are free, that you can't grant liens on this and that there's conflicting law in other jurisdictions that would say that they're right. That's the legal issue. I think we don't need to go into nuance disclosure with respect to it beyond that, and I think that the disclosure is sufficient at this point.

As to issue number three, now, what about issue number two?

MR. HENES: Can I be reminded of issue number two? I apologize. Oh, the structure. I think that we've -- I think we've set out in the disclosure statement what the structure is. We can -- we could add a sentence that says that we believe that the -- that retaining the equity -- the intercompany equity interest is purely mechanical for the company to emerge.

I will also go back and talk to FCC counsel. We may very well be able to modify the plan today to say that the equity interests -- the intercompany equity interests are -- get zero. And they're not preserved, but then our reorganized company will have the same structure.

It's a purely structural issue here. There's no value being allocated to those subsidiaries that hold the intercompany interest. But, again, if they disagree with that, that's something they can raise at confirmation. And they've already -- they can put that in their appendix that says that they believe that there's that issue out there. I don't think we need to continue to go on and on about the mechanical issues in our plan. I think the disclosure statement sets it all out.

I really do believe that our disclosure statement, and I appreciate, Your Honor, your comments about that it is clear, because we worked very hard to try to make it clear, especially upfront in that Q-and-A format, and I believe that anybody reviewing this disclosure statement to vote will be able to vote.

One other nuance, though, is, when we changed, and I mentioned this earlier, we've now changed it so we have two classes, really, of the second lien note claims: one against the parent, one against all of the subs. The one against all of the subs is not getting any value, so we're deeming it to be rejected.

So this is not an issue where they actually even have to vote. We're not going to send them a ballot with respect to those subsidiaries. The only place where they need to vote is up at the parent company, and that's because -- and if they -- they will get, no matter what, whether they vote yes or no, because we'd removed the deathtrap, they're going to get the proceeds from the settlement with the creditors' committee.

So I think that actually resolves what Mr. Shore was talking about which -- this is not an issue of if you vote yes you've just given up on this mechanical argument about the intercompany interests, because you're not voting; you're voting no. So I don't believe there needs to be anything else. I think it's just a waste time, truthfully.

THE COURT: Well, you said two things there: one, that it's a waste of time to deal with this and, two, that there might be a second modified plan after you talk to your FCC partners. I just want to know what your position is. Are you thinking about cleaning the plan up, if you can, on this issue, or are you thinking about leaving it the way it is?

MR. HENES: If -- well, my guess is we're going to leave it the way it is. If -- but if -- if -- and I have to talk to them. I don't want to delay the process. If there's a way to clean it up that gets rid of this issue, that Cyrus says "Yeah, we agree, we'll no longer object to it," once we leave here I'll clean it up. I'd rather get rid of that objection. But --

THE COURT: I suggest that you do the following. Try to clean it up, and, if you can, that probably takes away a complicating factor for confirmation as well. I'm not proposing how you do it, but if that's something you need to explore with others, take the time to do that. If you want to keep it the way it is, I'm going to overrule the objection as it relates to that mechanic, recognizing that it's an issue that I'm likely going to hear echoing back in the courtroom at confirmation.

MR. HENES: Okay.

THE COURT: And to the extent we can minimize those complications, probably the better off we'll all be.

MR. SHORE: Thank you, Your Honor.

THE COURT: Let's take a break for about ten minutes while I review schedule, and you can also consider scheduling issues here.

MR. HENES: Thank you, Your Honor.

THE COURT: Be back in ten.

MR. HENES: Thank you.

(Recess from 11:11 a.m. until 11:32 a.m.)

THE COURT: Okay, I have some dates and I don't know -- please be seated. I have some dates just to share with you. There is an existing ION date on the 28th. If you wanted to have argument in connection with the consolidated adversary proceedings/summary judgments motion heard that morning, they could be heard at 10 o'clock. However, I have a 2 o'clock matter that has been adjourned to that date, so you would only have the morning. It really depends upon how much time you think is needed to fully address the legal issues.

I also have a matter that has opened up in the first week of November, as a result of which I could give you the 3rd and 4th. And if you wanted the 3rd and 4th for confirmation and argument in connection with the summary judgment motions, it seems to me that having a couple of days back to back might be worthwhile, particularly if you're going to have valuation evidence to present. If those days don't work, that's too bad because those are the only really good days that I have.

MR. HENES: Then they work, Your Honor.

THE COURT: Good.

MR. HENES: Well, Your Honor, just a little bit of background from when you walked out. We'd like to -- ION would like to combine the adversary proceedings and the confirmation hearing, but Cyrus doesn't want to do that so they will be separate. But I do believe that having November 3rd and 4th for both the hearing on the consolidated adversary proceeding/summary judgment motions and confirmation does make sense to keep the process moving forward. So I would -- we would suggest to do that.

THE COURT: Let me make sure if we're talking about a distinction without a difference here. Are you talking about having argument on the summary judgment motions on the 3rd and then having confirmation on the 4th?

MR. HENES: Yes, Your Honor. I know, Your Honor.

THE COURT: Does that work for you, Mr. Shore?

MR. SHORE: Well, Your Honor, I mean, I guess it's no secret that the issue we're concerned with in the context of combining the adversary proceeding with the confirmation hearing is one of mootness. I fully believe that the debtors will not consent to any appeal, to the extent we're not capable of persuading you of this issue, and that they'll force to -- force us to seek a stay and bond in the context of a giant case with relatively smaller claims.

So I would ask that we have the argument on the 28th, we'll work the briefing schedule back on that, and have confirmation on the 3rd or 4th, so that, to the extent that the reference isn't withdrawn, it does give the district court an opportunity to resolve what we think will have to be an issue of FCC law that isn't decided.

THE COURT: With all respect, Mr. Shore, this is an issue of lien law and finance. It doesn't involve the ownership of FCC licenses or any of the matters that I believe traditionally fall within the purview of an FCC lawyer's expertise. I say that, without taking away from your argument, simply to say that you haven't yet persuaded me that this argument is anything other than designed to create leverage in the bankruptcy case for what your client is seeking, which is holdup value. That's what this is, I recognize it, and it's very hard for anybody else not to see it for what it is.

MR. SHORE: Well, Your Honor, if I might respond to that, I think, in the context of an adversary proceeding where summary judgment motions have now been agreed to be scheduled, Your Honor is of course keeping an open mind with respect to that.

THE COURT: Absolutely.

MR. SHORE: And I think that the concept of this deal and the way in which this deal was structured and FCC finance and the way all deals were structured at this time does not lead to the inexorable conclusion that the debtors and the first lien lenders would have you believe that this was an issue that was decided between the parties.

We believe this structure was price-structured and marketed as a deal that left open this issue between the first lien- and second lien holders, independent of the unsecured creditors of the estate, because everyone was made structurally senior. This deal was not structured to make the first lien lenders structurally senior; nor was there a payment subordination put in these notes which would have addressed the issue. It could not have been marketed that way.

So to the extent that we're talking about FCC license law and the way in which the deal is structured, it is an issue, and we believe it is an FCC issue because this is exactly the situation that the FCC is intending to avoid where a secured creditor is dictating the process by which a debtor is reorg -- or an FCC licensee is reorganized. This is exactly the type of control that the FCC is saying a secured lender should not have over the -- over a licensee debtor. And thank you for letting me say that, Your Honor.

THE COURT: Well, I appreciate what you said, but what you've said has also raised in my mind a question which I would like to give some further thought to. The parties have acted as if this is a matter which is ripe for summary judgment. Based upon what Mr. Shore has just said, it would sound to me as if he's bringing in a variety of matters that are not necessarily the sort that one would consider in a summary judgment setting on the papers but one that goes to the intention of the parties, negotiations, claimed ambiguities.

Do the parties in fact agree now that there are no material issues of fact in dispute and this is purely a legal question?

MR. HENES: The debtor clearly believes this is just a legal issue, Your Honor. We believe --

THE COURT: Mr. Shore, was that just a very effective legal argument, or are you suggesting that there are issues of fact going to the negotiation of the documents that need to be considered as part of resolving this issue?

MR. SHORE: I think there are facts to be considered. I don't think there are issues of fact with respect to that. The offering memorandum says what the offering memorandum says. The -- you know, to the extent that there are any affidavits, I don't know that there would be any disputed issues of fact, which would be the relevant inquiry in the context of a 7056 motion. It may be that at the end of the day, if Your Honor believes that there are facts outside, we may have to resolve that in the context of denials of the motions for summary judgment and further fact-finding. But I don't -- I think at this point the parties are in just the same position you see in a contractual dispute.

We both agree that the contract is unambiguous in our favor, but Your Honor may find differently.

THE COURT: Okay. Fair enough. And with that clarification I'm prepared to schedule this for argument, and you can develop a briefing schedule that assumes an argument on the 20th of October at 10 a.m., with the knowledge that I don't have an afternoon open. So you're going to be limited to a couple of hours. Do the parties recognize that limitation as a workable one?

MR. HENES: Your Honor, we do. I believe -- especially I know there's a lot of parties now that are involved in this, but my guess is that most of the parties, at least that agree with the debtor, will probably let the debtor make the arguments and just join in. So I believe we can get it done. We'll be very efficient with our argument.

THE COURT: Okay. And is -- Mr. Shore, is that -- is two hours or two and a half hours sufficient, you think, for the entire argument?

MR. SHORE: I believe so. I mean, we're one party, so --

THE COURT: Fine.

MR. SHORE: -- this has been made clear.

THE COURT: All right, and if turns out, for whatever reason, that we are unable to conclude the argument, we already have as a default mechanism built into the schedule going into November 3rd and 4th for confirmation and we can simply spill into that --

MR. HENES: Great.

THE COURT: -- date if necessary.

MR. HENES: That works, Your Honor. Thank you.

THE COURT: And I think this has been a useful process, except for one thing: I don't know what happens next with respect to the disclosure statement and the order approving the disclosure statement. There are some changes that will be made as a result of certain of the comments made on the record today. What's the timing and the expectation?

MR. HENES: We will make changes today/tomorrow and get something to you by tomorrow afternoon, hopefully with sign-off from everybody. But I think, based on your rulings today, Your Honor, that should be an easy thing to do.

THE COURT: Okay. Is there anything more?

MR. HENES: Not from the debtor, Your Honor.

THE COURT: Okay, we're adjourned.

MR. HENES: Thank you, Your Honor.

THE COURT: Thank you.

(Proceedings concluded at 11:41 AM)

I N D E X

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HEARING re Debtors' Motion for Entry of an Order (I) Approving the Debtors' Disclosure Statement, (II) Establishing a Record Date for Voting on the Debtors' Joint Plan of Reorganization, (III) Approving Solicitation Packages and Procedures for the Distribution Thereof, (IV) Approving the Forms of Ballots and Manner of Notice, (V) Establishing Procedures for Voting on the Plan and (VI) Establishing Notice and Objection Procedures for Confirmation of the Plan (Docket No. 223)

C E R T I F I C A T I O N

I, Clara Rubin, certify that the foregoing transcript is a true and accurate record of the proceedings.

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Date: October 2, 2009